

Rule 15, Ariz. R. Crim. P., Discovery:

STATE'S RESPONSE TO DEFENDANT'S MOTION FOR DISCOVERY

A.R.S. § 13-3553, proscribing sexual exploitation of a minor, prohibits duplication of child pornography. That statute also binds the State, so the State cannot copy child pornography evidence for the defense; however, they can allow the defense to view the evidence without giving it to them.

The State of Arizona, by and through undersigned counsel, hereby responds to the defendant's motion for discovery. This response is supported by the attached Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

I. The Facts:

The State has already provided Items 1, 2, and 3 to the defendant, and the State has also provided the defendant with additional discovery material received from the United States Postal Service.

However, the defendant is also requesting the State to provide “copies of all photographs and videotapes which are the basis of the indictment on Sexual Exploitation Counts 1-20.” The photographs in this case depict children engaged in sexual acts. (No videotapes are included in the charges against the defendant.)

II. The Law:

Rule 15.1(a)(4), Ariz. R. Crim. P., ordinarily requires the State to “make available to the defendant for examination and reproduction . . . A list of all papers, documents, photographs or tangible objects which the prosecutor will use at trial or which were obtained from or purportedly belong to the defendant.” Under this rule, the State usually provides the defense with copies of all photographs and documents that the State intends

to use at trial. However, this case involves photographs of children engaging in sexual acts. A.R.S. § 13-3553(A)(2) prohibits “Distributing, transporting, exhibiting, receiving, selling, purchasing, electronically transmitting, possessing or exchanging any visual depiction in which minors are engaged in exploitive exhibition or other sexual conduct.” It would be illegal for the State to reproduce contraband material and provide copies to the defendant, because that would require the State to commit the very same crimes for which it is now prosecuting the defendant. If someone were to break into defense counsel’s office and obtain that contraband material, the photographs could be reproduced innumerable times and could not be tracked.

However, the State recognizes that the defendant needs to view the evidence for which he is being prosecuted. Therefore, the Glendale Police Department and the United States Postal Service are willing to take the original evidence to any agreed-upon location so that the defendant, defense counsel, and/or the defense’s expert(s) may view the material in person.

CONCLUSION

Therefore, the State requests that the Court not order or allow the contraband material to be duplicated, but that the Court allow the Glendale Police Department and/or the United States Postal Service to take the original evidence so that the defendant, defense counsel, and/or the defense’s expert(s) can review the evidence in person.